IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15/03/2004

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THE HONOURABLE MR.JUSTICE M. CHOCKALINGAM

SECOND APPEAL NO.1193 OF 1993

1. R. Lingaswami
2. V. Kanakaraj .. Appellants

-Vs-

D. Kuber .. Respondent

This second appeal is preferred under Section 100 of CPC against the decree and judgement of the learned District Judge, Erode made in AS No.59 of 1991 dated 16.9.1992 confirming the judgment and decree of the learned Subordinate Judge, Dharapuram made in OS No.119 of 1989 dated 10.4.1991.

!For Appellants : Mr.M.V.Krishnan

^For Respondent : Mr.N.Vanchinathan

:JUDGMENT

The defendants, whose defence plea in a suit based on promissory note was rejected by both the courts below, have brought forth this second appeal.
2. The respondent plaintiff filed a suit, seeking for recovery of sum of Rs.25000/- along with interest, alleging that the defendants appellants executed Ex.A.1 promissory note on 17.2.1989 for the borrowal of Rs.25000/- and they agreed to repay the principal and interest at 12%. Despite demands, no repayment was made and the same compelled the plaintiff to file the suit for recovery of money.
3. The suit was resisted by the defendants by stating that it was a false claim; that the first defendant was 33 years old and the second defendant was 26 years old; that the Door Nos.130, 131 and 132

in Big Bazaar, Dharapuram Town belonged to the plaintiff; that the defendants purchased the same on 14.2.1989 for a consideration of Rs.1,90 ,000/-; that there was an oral agreement preceding the sale on 20.1.1

989; that on that day, in order to keep the agreement terms assured, the plaintiff got the signature of the defendants in an unfilled stamp paper; that it was, subsequently, converted into the suit promissory note, and thus, the document was a fabricated one and it was not supported by consideration, and hence, the suit was to be dismissed.

4. The trial court framed necessary issues, tried the suit and decreed the same. Aggrieved, the defendants preferred an appeal, which was also dismissed. The aggrieved defendants have brought forth this second appeal.

5. At the time of admission, the following substantial questions of law were formulated by this Court for consideration:

1) Whether in the circumstances of the case, the Court below ought to have held that the plaintiff has failed to prove the due execution of the suit promissory note?

2) Whether the finding of the Court below is vitiated by failure to consider material evidence?

6. Heard the learned counsel for the appellants and also the learned counsel for the respondent on those contentions.

7. After careful consideration of the rival submissions and the scrutiny of the materials available, this Court is of the considered view that there is no merit in this second appeal. It was a suit filed by the respondent herein, seeking for recovery of a sum of Rs.25000/-, alleging that the defendants executed Ex.A.1 promissory note on 17.2.1989 for making a borrowal of Rs.25000/-. The defence plea by the appellants was that Ex.A.1 was a fabricated document, and apart from that it was not supported by consideration.

8. In order to substantiate that Ex.A.1 promissory note was true and supported by consideration, the plaintiff has not only examined himself, but has also examined P.W.2, who attested the document. Both the witnesses have categorically spoken to the fact as to the execution of the document and passing of consideration of Rs.25000/- on 17.2 .19 89 from the hands of the plaintiff to the defendants. The first defendant as D.W.1 has categorically admitted that there was no enmity between himself and P.Ws.1 and 2. This Court is unable to see any reason why the evidence of P.W.2 was to be rejected. The defence plea that there was a sale transaction between the parties on 14.2.1989; that an oral agreement was entered into between the parties on 20.1.1 989 ; that in order to get it assured, the defendants put their signature in an unfilled stamp paper and handed over the same to the plaintiff; that the same was subsequently fabricated as one promissory note cannot be countenanced even for a moment.

9. At this juncture, it has to be pointed out that the defendants have well admitted their signature in Ex.A.1 promissory note, and hence, presumption has got to be necessarily drawn. Had it been true that the defendants handed over the signed unfilled stamp paper to the plaintiff as put forth by them, there could not be any impediment for them to get it back at the time of the alleged sale on 14.2.1989. Hence, the defence plea was rightly rejected by both the courts below. The plaintiff has proved his case with sufficient evidence. This Court is unable to see any reason to disturb the concurrent finding of both the courts below.

10. In the result, this second appeal fails and the same is dismissed, leaving the parties to bear their costs.

Index : Yes
Internet : Yes

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To

1. The Principal District Judge, Erode
2. The Subordinate Judge, Dharapuram
3. The Record Keeper, VR Section,
High Court, Madras